

### **REMARKS**

In the April 11, 2007 Notice of Non-Responsive Amendment, the Examiner states that Applicants' December 28, 2006 reply is non-responsive because it did not provisionally elect an invention originally presented in the application. The Examiner also states that the claim amendments filed December 28, 2006 have not been entered.<sup>1</sup> The Examiner recommends that Applicants respond to the Notice by adding the claims filed December 28, 2006 with a request that the restriction and election requirement be appropriately modified or withdrawn and replaced by a new requirement. However, Applicants are still required to provisionally elect an invention as outlined in the July 26, 2006 Restriction Requirement.

#### **Claim Amendments**

Claims 4, 5, 7-11, 13-17, 19-23, 31-48, 50, 51, and 53-55 are withdrawn as these claims are directed to the non-elected subject matter. Claims 1 and 49 are amended to delete non-elected subject matter.

Applicants request that claims 56-70 be entered. These claims were previously filed in the December 28, 2006 Amendment and are designated herein as "Not entered" in the Listing of Claims. Support for the claims may be found throughout the specification. In particular, support for claim 56 may be found, for example, at page 5, lines 15-27, page 9, lines 13-19, and page 17, lines 17-22, etc. Support for claim 57 may be found, for example, at page 9, lines 13-19, page 16, line 29 to page 17, line 4, and page 18, line 22 to page 19, line 6, etc. Support for new claims 58 and 66 may be found, for example, at page 9, lines 5-12, etc. Support for new claims 59 and 67 may be found, for example, at page 9, lines 20-26, etc. Support for new claims 60-62 and 68-70 may be found, for example, in Figure 9B and page 23, line 27 to page 24, line 12, etc. Support for new claims 63-64 may be found, for example, at page 5, lines 15-27 and page 17, lines 17-22, etc.

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<sup>1</sup> The Examiner states that the amendments to the claims have not been entered but he does not remark on the amendments to the specification that were also filed with Applicants' December 28, 2006 Response. In the absence of any indication to the contrary, Applicants' assume that the amendments to the specification have been entered. Accordingly, the amendments to the specification are not filed again with this May 11, 2007 Response.

Support for new claim 65 may be found, for example, at page 5, lines 15-27 and page 18, line 22 to page 19, line 6, etc.

The claim amendments introduce no new matter. Applicants expressly reserve the right to pursue any cancelled subject matter in this application or in subsequent applications that claim benefit of this application.

### **Restriction requirement**

The Restriction Requirement issued July 26, 2006, divided the claims into Groups I-IV and required election of one group to be examined:

Group I: Claims 1-3, 25-30, 49 and 52, drawn to a method of determining whether OX-2/CD200 is upregulated in a subject and administering to those subjects in which CD200 is upregulated a polypeptide that binds OX-2/CD200.

Group II: Claims 1, 4, 5, 25-30, and 49, drawn to a method of determining whether OX-2/CD200 is upregulated in a subject and administering to those subjects in which CD200 is upregulated a polypeptide that binds OX-2/CD200 receptor.

Group III: Claims 7-9, 13-15, 19-21, 31-48, 50, 51, and 53-55, drawn to a method of treating a disease state wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200.

Group IV: Claims 7, 10, 11, 13, 16, 17, 19, 22, 23, 31-48, 50, and 51, drawn to a method of treating a disease state wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200 receptor.

The Restriction Requirement further required election of one sequence selected from among Groups A-C and one sequence selected from Groups D-F:

Group A: SEQ ID NOS: 5, 21, 29

Group B: SEQ ID NOS: 12, 23, 37

Group C: SEQ ID NOS: 13, 23, 38

and

Group D: SEQ ID NOS: 50, 69, 88

Group E: SEQ ID NOS: 55, 74, 93

Group F: SEQ ID NOS: 56, 75, 94

In response to the restriction requirement, Applicants hereby provisionally elect Group I and Groups B and E, with traverse. Claims 1-3, 25-30, 49, and 52 and SEQ ID NOS: 12, 23, and 37 and SEQ ID NOS: 55, 74, and 93 correspond to the elected groups.

Claims 56-70, herein designated as "Not entered," are also drawn to the elected invention and it is requested that they be entered. Independent claim 56, for example, is drawn to a method comprising determining whether OX-2/CD200 is upregulated in a subject. The election of Groups B and E is made not only for the claims of Group I but additionally for claims 56-70.

Restriction between groups of claims or sequences is proper only if a search of the groups or sequences together would place an unreasonable search burden on the examiner. In this case, a search of Groups A and D, B and E, and C and F, would not pose an undue search burden on the Examiner. These Groups describe the light chain CDRs (Groups A, B, and C) and the heavy chain CDRs (Groups D, E, and F) of three antibodies that specifically bind OX-2/CD200. As these antibodies bind to the same antigen, a search of all three antibodies would not pose an undue search burden on the Examiner, regardless of any structural differences that may exist among the antibodies. Accordingly, a restriction between the SEQ ID NOS is improper.

The antibodies, and the sequences describing the CDRs of the antibodies, are species of the claimed invention, and the restriction requirement requiring an election of sequences should therefore be treated as an election of species requirement. Accordingly, Applicants request that the restriction requirement be withdrawn, in part.

Applicants request that the Examiner consider the claims of elected Group I and new claims 56-70 or withdraw the restriction requirement and issue a new restriction requirement based on claims 1-70.

Applicants expressly reserve the right to prosecute non-elected subject matter in other applications claiming the benefit of priority from the present application.


The Examiner is invited to telephone the undersigned to discuss any issue pertaining to this response. Applicants request favorable consideration of the application and early allowance of the pending claims.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Applicants have authorized the Commissioner to charge additional claim fees to **Deposit Account No. 18-1945, Order No. ALEX-P03-060**. Should any extensions of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to Deposit Account No. 18-1945, under Order No. ALEX-P03-060.

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Respectfully submitted,

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